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TECHNOLOGIES, LLC and ACE DURAFLO
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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11 PIPE RESTORATION
12 TECHNOLOGIES, LLC, a Nevada
13 Limited Liability Company; ACE
14 DURAFLO SYSTEMS, LLC. a Nevada
15 Limited Liability Company,

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Plaintiffs,

vs.

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FLORIDA DRAIN-LINING
18 SOLUTIONS, LLC, a Florida Limited
Liability Company; RONALD
CIDDINGTON, an individual; and
19 DOES 1 through 10, inclusive,

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Defendants.

Case No. 8:23-cv-00237-FWS-DFM

**PLAINTIFFS' UNOPPOSED EX
PARTE APPLICATION FOR LEAVE
TO FILE SUR-REPLY BRIEF TO
RESPOND TO NEW EVIDENCE
AND ARGUMENT IN
DEFENDANTS' REPLY**

(Memorandum of Points and
Authorities Attached hereto;
Declaration of Ronald P. Oines and
[Proposed] Order Filed Herewith)

Hon. Fred W. Slaughter
Courtroom: 10D

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EX PARTE APPLICATION

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Plaintiffs PIPE RESTORATION TECHNOLOGIES, LLC (“PRT”) and ACE DURAFLO SYSTEMS, LLC (“ACE”) (collectively, “Plaintiffs”) submit this ***unopposed*** Ex Parte Application for leave to file a brief sur-reply to respond to new evidence and arguments made for the first time in Defendants’ reply in support of their Motion to dismiss or transfer (“Motion”) (ECF no. 16).

1 **NOTICE TO OPPOSING COUNSEL**

2 Defendants FLORIDA DRAIN-LINING SOLUTIONS, LLC (“FDLS”) and
3 RONALD CODDINGTON (“Coddington”) (collectively, “Defendants”) are
4 represented by Otto Lee, Kevin Viau and Cecilia Liu (cliu@iplg.com) of Intellectual
5 Property Law Group LLP, 1871 The Alameda, Suite 250, San Jose, CA 95126;
6 Telephone: (408) 286-8933

7 Plaintiffs’ counsel gave notice of their intent to file this Application at
8 approximately 3:52 p.m. on April 7, 2023. (Oines Dec. ¶ 2.) At 5:00 p.m. on April 7,
9 2023, Defendants’ counsel indicated by email that they do not oppose the relief
10 sought by this Application. (*Id.*)

11 **REASONS FOR SEEKING EX PARTE RELIEF**

12 Defendants filed their Reply brief and new Coddington Declaration on April
13 6, 2023. The hearing on Defendants’ Motion is scheduled for April 20, 2023.
14 Plaintiffs request that they be allowed to file a sur-reply brief prior to the April 20,
15 2023 hearing date. Plaintiffs suggest that they could file the sur-reply by April 13,
16 2023. In light of the upcoming hearing, Plaintiffs do not have time to file a fully
17 noticed motion to seek leave to file a sur-reply.

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 Other than a Declaration from Coddington, Defendants did not submit any
20 evidence in support of their Motion. In his Declaration filed in support of the
21 Motion, Coddington referred to a February, 2012 “Consent to Transfer and
22 Assumption of License Agreement,” (“Consent Agreement”) pursuant to which
23 Coddington’s company, Florida Pipe-Lining Solutions, LLC, assumed all rights,
24 duties and obligations under the pertinent License Agreement. (ECF no. 16-1, ¶ 10.)
25 However, Defendants did not attach the Consent Agreement to Coddington’s
26 Declaration or the Motion, and did not argue that the Consent Agreement supported
27 Defendants’ argument that the forum selection clause does not apply to this case.

28 Plaintiffs filed their Opposition papers on March 30, 2023. (ECF nos. 18;

1 18-1; 18-2.) Defendants filed their Reply on April 7, 2023. (ECF no. 19.)
 2 Defendants attached three exhibits to the Reply, including a copy of a Consent
 3 Agreement. Defendants also submitted another 17 paragraph Declaration of
 4 Coddington. (ECF 19-1.)

5 Most of the new evidence submitted is not even relevant to Defendants'
 6 Motion. However, Defendants now argue that the Consent Agreement somehow
 7 shows that Coddington did not agree to be bound by the venue clause in the License
 8 Agreement. (ECF no. 19, pg. 2.) Plaintiffs assert that the Consent Agreement shows
 9 just the opposite, i.e., that Coddington expressly agreed that the venue clause applies
 10 to him and his company.

11 By this Application, Plaintiffs merely seek an opportunity to file a brief sur-
 12 reply to address the three new exhibits and the new Declaration, and the new
 13 arguments based on the new evidence, including the new argument based on the
 14 Consent Agreement. As this Court recently held, "it is improper for a party to
 15 introduce new facts or arguments beyond those raised in the moving papers." *Ponce*
 16 *v. Medline Industries, LP*, 2023 WL 2628694 (C.D. Cal. 2023); citing *Schwartz v.*
 17 *Upper Deck Co.*, 183 F.R.D. 672, 682 (S.D. Cal. 1999) ("It is well accepted that
 18 raising of new issues and submission of new facts in reply brief is improper.")

19 When a party submits new evidence or arguments in a reply, the Court should
 20 permit the opposing party to respond to such new evidence and arguments in a sur-
 21 reply brief. *United States v. Venture One Mortgage Corporation*, 2015 WL
 22 12532139, *2 (S.D. Cal. 2015); *El Pollo Loco v. Hashim*, 316 F.3d 1032, 1040-41
 23 (9th Cir. 2003).

24 Here, although Defendants referred to the Consent in their Motion, they did
 25 not submit the Consent, and they did not argue that Coddington did not agree to the
 26 venue clause. In the Motion, Defendants asserted, in pertinent part:

27 "In February 2012, ACE, FPLS and Coddington signed a Consent to
 28 Transfer and Assumption Of License Agreements ("Consent") in

which the existing licensee at that time transferred 100% of its rights, duties and obligations under and pursuant to the license agreement to assignee FPLS. (Coddington. Decl. ¶10) Pursuant to the dispute resolution clause in this Consent, ‘The parties to this Consent agree to resolve any disputes arising out of this Consent pursuant to the dispute resolution provisions in the License Agreement, including, without limitation, the provisions addressing venue, choice of law and attorneys’ fees.’ According to clause 22.07 Choice of Forum in the license agreement, ‘Licensor and Licensee (and their respective owners and guarantors if applicable) each agree that if litigation is permitted under this Agreement, the sole forum for litigation arising under this Agreement...will be an appropriate state or federal court in California.”’

(Motion, pgs. 4:24-5:7.)

In the Motion, Defendants did not submit a copy of the Consent, did not assert that Coddington crossed out any portion of the Consent, and did not seek to argue that by crossing out a portion relating to a personal guaranty, Coddington somehow also did not agree to the venue clause in the License Agreement and the Consent.

By this Application, Plaintiffs simply wish to have an opportunity to respond to Defendants, new evidence and new argument relating thereto.

CONCLUSION

Plaintiffs request an Order allowing them to file a sur-reply to address the new evidence submitted by Defendants with their Reply and the new arguments based thereon. Plaintiffs request that the Order allow a sur-reply up to 10 pages in length, which would be filed on or before April 13, 2023. A proposed Order is submitted herewith.

1 Dated: April 10, 2023

RUTAN & TUCKER, LLP
RONALD P. OINES
TALYA GOLDFINGER

3 By: /s/ Ronald P. Oines

4 Ronald P. Oines
5 Attorneys for Plaintiffs PIPE
6 RESTORATION TECHNOLOGIES,
LLC and ACE DURAFLO
SYSTEMS, LLC

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Certificate of Compliance

The undersigned, counsel of record for Plaintiffs Pipe Restoration Technologies, LLC and Ace Duraflo Systems, LLC, certifies that this brief contains _____ words, which complies with the word limit of L.R. 11-6.1.

Dated: April 10, 2023

RUTAN & TUCKER, LLP
RONALD P. OINES
TALYA GOLDFINGER

By: /s/ Ronald P. Oines
Ronald P. Oines
Attorneys for Plaintiffs PIPE
RESTORATION TECHNOLOGIES,
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SYSTEMS, LLC